

MALAYSIAN REPORTS

SUPERINTENDENT OF LANDS & SURVEYS,
FIFTH DIVISION, LIMBANG v.
LIM TECK HOO & ANOR.[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat &
Salleh Abas F.JJ.) April 23 & July 6, 1979]

[Kuching — Federal Court Civil Appeal No. 127 of 1978]

Land Law — Land Acquisition — Date on which market value is to be determined — Whether date of publication of notification or the date of declaration — Sarawak Land Code (Cap. 81), ss. 47, 48 & 60.

In this case the facts were that notification under section 47 of the Sarawak Land Code stating that the lands were likely to be required for public purposes was published on March 13, 1971. Subsequently four different declarations made under section 48 of the Ordinance stating that these lands were needed for public purposes were published in the *Gazette* on August 8, 1974, October 10, 1974, August 7, 1975 and November 11, 1976. The learned trial judge held that the proper date for determining the market value was not the date on which notification under section 47 was published, but the various dates on which declarations under section 48 of the Ordinance was gazetted. In his judgment he said that as soon as a declaration under section 48 was issued, the notification under section 47 became fully exhausted. Accordingly he made awards based on the market value of the land as on the dates of the declarations under section 48. However he also made an alternative assessment of the market value as on the date of the publication of the notification under section 47. The appellant appealed on the ground that the learned judge was wrong to say that the material date for the determination of compensation should be based on section 48. On the other hand the respondent submitted that the learned judge was right to make the awards under section 48 but contended that the awards were inadequate.

Held: the learned trial judge should in accordance with section 60 of the Land Code have awarded the owner the assessment in accordance with the date of the notification under section 47. The appeal of the appellant is therefore allowed and the cross-appeal of the respondent dismissed.

Cases referred to:-

- (1) *Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co. Ltd.* [1966] 1 M.L.J. 243, 247.
- (2) *State of Madhya Pradesh & Ors. v. Vishnu Prasad Sharma & Ors.* A.I.R. 1966 S.C., 1593.
- (3) *Aik Hoe & Co. Ltd. v. Superintendent of Lands and Surveys* [1968] 1 M.L.J. 293, 294.
- (4) *Assistant Development Officer v. Tayabelli* A.I.R. 1933 Bom. 361, 364.
- (5) *Karam Singh v. Menteri Hal Ehwal Dalam Negeri* [1969] 2 M.L.J. 129, 141.

FEDERAL COURT.

Zaidi Khaldin Zainie (Legal Officer, Land Office, Kuching) for the appellant.

Daniel Tajem (Lo Ming with him) for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo): This appeal and cross-appeal against the decision of the High Court on a reference by the appellant concern the amount of compensation in respect of four parcels of land, namely, Lots 13, 83, 89 and 92, situated at Pandaruan Land District, Limbang, compulsorily acquired by the Sarawak Government under the provisions of the Sarawak Land Code (Cap. 81).

At the outset I may mention that there is in fact only one respondent, Lim Teck Hoo. The name of Tan Mah Kuan should not have appeared on the record as respondent as he had not appealed against the awards made by the High Court. Lim Teck Hoo

A was the registered owner of both original parent Lots 1460 and 2007 containing an area of 9.95 acres and 257 acres respectively. These two lots were adjacent to one another. Both titles were classified as agricultural without other restrictions and had the same expiry date.

As one of the main issues is the material date for the determination of compensation, it will be convenient to set out briefly certain relevant dates and events relating to the four lots. A notification (G.N. No. 709) under section 47 published in the Sarawak Government Gazette (referred hereinafter as S.G.G.) dated March 19, 1971 indicates that Lots 1578, 795, 796, 1460 and part of Lot 2007 (involving 100.6 acres) located at Pandaruan Land District, Limbang were "likely to be needed for resettlement of the people of Kampong Bangkita and Kampong Penapak, Limbang." (See page 13 of Appeal Record). It may be added that a second notification (G.N. No. 970) also under section 47 published in the S.G.G. dated March 29, 1973 indicates that the remaining part of Lot 2007 would "likely be needed for urban development."

Parcels were carved out of parent lots and acquired by Government at different stages. The first stage involved the acquisition of four lots, namely, 14, 15, 795 and 53, under section 48 vide G.N. No. 355 published in the S.G.G. dated February 1, 1973 indicating that the land "is needed for provision of a site for the establishment of a Government Hospital." These lots were carved out of various parent lots including Lots 1460 and 2007. Appellant held an inquiry on August 7, 1973 and made his awards on September 13, 1973. Next, the acquisition of Lots 13 and 83 under section 48 vide G.N. No. 2281 published in the S.G.G. dated August 8, 1974 indicated that the land "is needed for urban development in connection with the planning development of Limbang Bazaar." (See page 19 of Appeal Record). The parent Lot 1460 was mutated to form Lots 13 and 14 which were acquired earlier. The other parent Lot 2007 was also mutated into Lots 51, 52 and 53 which were also acquired earlier. Lot 51 was mutated into Lots 82 and 83. Lot 82 was mutated to form Lots 89 and 90. In turn, Lot 90 was mutated to form Lots 91 and 92. Then Lot 89 was acquired under section 48 vide G.N. No. 2950 published in the S.G.G. dated October 10, 1974 "for the provision of residential accommodation for public servants." (See page 50 of Appeal Record). Finally, Lot 92 was acquired under section 48 vide G.N. No. 2307 published in the S.G.G. dated August 7, 1975 "for the provision of a site for a school." The acquisition of Lot 91 covering about 183 acres was cancelled under section 79 vide G.N. No. 3328 dated November 6, 1975 and declared to be no longer required for a public purpose. It was notified that Lot 91 ceased to form part of the land declared to be likely to be needed for a public purpose by G.N. 709 and G.N. 970 mentioned earlier. Lot 91 was mutated to form Lots 96 and 97. A fresh notification (G.N. 709) under section 47 dated March 4, 1976 was imposed on Lot 97 containing an area of 9.98 acres as "it is likely to be needed for the provision of residential accommodation for public servant." In respect of the four lots inquiries were subsequently made on various dates and awards made. Eventually, Lots 16, 52 and 96 were left unacquired.

Limbang is the administrative capital of the Fifth Division with a population of about 19,000 people according to the last census taken in 1970. About a quarter of Lot 1460 (now Lot 14) has a road frontage into Pandaruan Road which is sealed and the rest of Lot 1460 (now Lot 13) has a road frontage into Batu Biah Road which has a motorable track for part of the way before the junction with Limpaki Road Reserve. All the four lots were Mixed Zone Land. Such land commanded good value as it can be transferred to anyone. A part of the resumed lands fronting Pandaruan Road had been levelled by respondent for eventual development. The learned judge found Lot 13 to be a narrow strip of land rather oblongated planted with some rubber trees. It had not been developed on August 8, 1974. About a third of the land was below the level of Batu Biah Road. A small stream ran through part of the land. Near the stream was an old muslim cemetery with about 40 graves covering an area of about 0.08 acre. The eastern end of this land joins the Limpaki Road Reserve. Lot 83 is immediately behind Lot 13. The eastern end of Lot 83 is fronting the Limpaki Road Reserve. This lot contains 40.34 acres and is, therefore, very large compared with the other lots. Appellant awarded respondent \$11,000 for two buildings on this land and \$2,000 for disturbance. These two sums are not in dispute, being accepted by respondent apparently as reasonable. Lot 89 is almost triangular in shape. The eastern end joins Limpaki Road Reserve and the southern end abuts into Lot 83. Lot 89 was planted with rubber trees and the terrain was hilly and rugged. Lot 92 was also planted with rubber trees and the terrain was similarly hilly and rugged.

Part IV of the Land Code, containing sections 45 to 83, makes provisions for the resumption of alienated land. Section 46 sets out the purpose for which land may be resumed or acquired. Under the Land Code it is possible for Government to acquire land by using either a combination of sections 47 and 48 or section 48 alone. Sections 47 and 48 enable respective notifications to be published to indicate that land "is likely to be needed" and "is needed". Both sections have the effect of freezing the value of land for the purpose of determining compensation as at the date of publication of the notification. The use of either section 47 or section 48 would seem to depend upon whether the acquisition is a "possibility" or a "certainty." Other factors, such as, urgency and size of land are relevant. In most cases, Government would use section 47 in order to enter the land, examine it and ascertain whether it is suitable for the purpose for which it is needed. If it is found to be suitable then Government would make a declaration that the land is needed for a particular public purpose under section 48. Pursuant to section 49 the Superintendent would prepare plans for the land and cause notices to be published and deal with claims for compensation. He would then hold an inquiry and make award under section 51. Following this, he may exercise his power under section 53 to take possession of the land. Pursuant to section 54 the Registrar would make entry in respect of such land in the register and calling on the landowners to deliver up the land title for cancellation and issue new title or titles. Section 54(4) says

A that "the Superintendent shall, in cases where part only of the land has been acquired, cause to be prepared documents of title for the unacquired part or parts of the land and shall, after cancellation of the existing documents of title issue such documents of title to the person entitled thereto." If his award is not accepted the Superintendent would refer the matter to the High Court for decision. Section 60(1)(a) provides that:—

"60(1). In determining the amount of compensation to be awarded for land resumed under this Part, the court shall take into consideration —

(a) the market value at the date of the publication of the notification under section 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under section 48...."

C Pursuant to section 51 inquiries were held by appellant to assess the amount of compensation. Invariably, he accepted the valuation of Government valuer who used the comparative sales method in assessing the value of the land acquired on the basis that the material date was March 19, 1971 under section 47. Particulars of his awards in respect of the four lots are as follows:

			Total Amount Awarded	Remarks
Descrip- tion	Area	Award Per Acre		
Lot 13	6.49 acres	\$5,000	\$ 32,450	plus \$13,000 for buildings and disturbance.
Lot 83	40.34 acres	3,750	164,275	
E Lot 89	10.14 acres	3,750	38,025	
Lot 92	5.25 acres	3,800	19,950	

The respondent was dissatisfied with the awards so pursuant to section 56 appellant referred the matter to the High Court. The learned judge relied on the decision of this court in *Superintendent of Lands & Surveys Sarawak v. Aik Hoe & Co. Ltd.*⁽¹⁾ for the proposition that it is for the owner to prove that the award was inadequate. He held that appellant was wrong to determine the market value of the four lots as at March 19, 1971 and that, therefore, the awards could not be sustained. He considered that respondent had satisfied him that the awards were not only inadequate but also wrong in law. On the basis of section 48 he awarded respondent as follows:—

			Total Amount Awarded	Remarks
Descrip- tion	Area	Award Per Acre		
Lot 13	6.49 acres	\$8,500	\$ 55,165	plus \$11,000 for values of two buildings and \$2,000 for disturbance.
Lot 83	40.34 acres	6,500	262,210	
H Lot 89	10.14 acres	7,000	70,980	
Lot 92	5.25 acres	7,500	39,375	

In the event that his interpretation of sections 47 and 48 was wrong and that the market value should be based on section 47 he made the following awards:—

			Total Amount Awarded	Remarks
Descrip- tion	Area	Award Per Acre		
Lot 13	6.49 acres	\$6,500	\$ 42,185	plus \$11,000 for two buildings and \$2,000 for disturbance.
Lot 83	40.34 acres	5,000	201,700	
I Lot 89	10.14 acres	5,000	50,700	
Lot 92	5.25 acres	5,500	28,875	

Appellant is not appealing against the above awards made by the learned judge on the basis of section 47. However, it is his contention that the learned judge was wrong to say that the material date for the determination of compensation should be based on section 48 by relying on Indian Law on acquisition which is quite different from the Sarawak legislation on the matter. On the other hand, respondent submitted that the learned judge was right to make the awards under section 48. But, he contended that awards were inadequate and should be increased. On the basis of section 48 the material date for Lots 13 and 83 is August 8, 1974, Lot 89 is October 10, 1974 and Lot 92 is August 7, 1975. However, if the material date for the four lots is held to be March 19, 1971 under section 47 the contention of respondent is that the awards are grossly inadequate and should be increased.

The learned judge accepted the respondent's submissions that there could be no acquisition by stages and that a notification under section 47 could be followed by only one declaration under section 48. Section 47 would then be deemed to be exhausted. Therefore, he held that section 47 could not be used to support any subsequent declaration or declarations under section 48. In short, section 47 could be used once only by a declaration under section 48. In construing the two sections the learned judge adopted the interpretation of the Indian Supreme Court of two purported similar sections of the Indian Land Acquisition Act in *The State of Madhya Pradesh & Ors. v. Vishnu Prasad Sharma & Ors.*⁽²⁾ Briefly, the facts are that in 1949 a notification issued under section 4(1) of the Indian Land Acquisition Act, 1894 declared that lands in eleven villages were likely to be needed for a public purpose, that is, the erection of an iron and steel plant. Therefore, notifications under section 6 were issued with respect to the said villages. Notifications under section 6 were issued even in 1956 and 1960. Respondents who were interested in some of the land notified filed a writ of petition in the High Court challenging the validity of the notification under section 6. It was contended that the notification under section 6 was void as it had not been preceded by fresh notification under section 4(1). The notification under section 4(1) issued in 1949 had exhausted itself when notification under section 6 had been issued previously and, therefore, could not support the issuance of another notification under section 6. Shortly stated, a notification under section 4(1) could be followed only by one notification under section 6. There could be no successive notifications under section 6 with respect to lands comprised in one notification under section 4(1).

The Supreme Court was not impressed by the appellant's contention (i) that it was open to the government to issue as many notifications as it deemed fit under section 6 with respect to lands comprised in one notification under section 4(1) and (ii) that it was not correct that the notification under section 4(1) was exhausted as soon as one notification under section 6 was issued with respect to a part of the land comprised in the notification under section 4(1). The Supreme Court upheld the respondents' contention and held that a notification under section 4(1) could only be followed by one notification under section 6. Fur-

ther, it was held that it was not open to the government to issue successive notifications with respect to parts of the land comprised in one notification under section 4(1) and that as soon as one notification was issued under section 6 whether it be with respect to part of or the whole of the land comprised in the notification under section 4(1), the notification under section 4(1) was exhausted and could not support any further notification under section 6.

The *ratio decidendi* of *Vishnu Prasad Sharma's case*⁽²⁾ is that for the acquisition process to be valid under the Indian Land Acquisition Act, 1894, sections 4 and 6 must be used together. One without the other would be futile. A comparison between the provisions of the Indian Land Acquisition legislation and the Sarawak legislation on the same subject makes it clear that the *ratio decidendi* of *Vishnu Prasad Sharma's case*⁽²⁾ is definitely not applicable to the case under appeal.

All three learned judges of the Indian Supreme Court in that case considered sections 4, 5A and 6 formed one complete scheme and were inter-related. As Wanchoo J. said at page 1599:—

"Sections 4, 5A and 6 in our opinion are integrally connected. Section 4 specifies the locality in which the land is acquired and provides for survey to decide what particular land out of the locality would be needed. Section 5A provides for hearing of objections to the acquisition and after these objections are decided the government has to make up its mind and declare what particular land out of the locality it will acquire. When it has so made up its mind it makes a declaration as to the particular land out of the locality notified in section 4(1) which it will acquire. It is clear from this intimate connection between sections 4, 5A and 6 that as soon as the government has made up its mind what particular land out of the locality it requires, it has to issue a declaration under section 6 to that effect. The purpose of the notification under section 4(1) is at this stage over and it may be said that it is exhausted after the notification under section 6."

The Sarawak legislation does not have a provision similar to section 5A which provides for hearing of objections to the acquisition before the government makes up its mind and declare what particular land out of the locality it will acquire. Under the Indian Land Acquisition legislation there could be no acquisition by the mere issue of a declaration under section 6 without having been preceded by a notification under section 4. However, the scheme devised under the Sarawak legislation is completely different. There is no provision for objection on the part of the land owner to the acquisition itself. All his objections were limited to the amount of compensation and matters connected therewith, such as, measurements, areas, and respective interests of persons claiming compensation. In my opinion acquisition in Sarawak is perfectly lawful by the government issuing a declaration under section 48 without having been preceded by a notification under section 47.

While Indian authorities should be accorded every respect they are not binding. In the absence of local authorities on any particular point they may, with caution, be followed where applicable. *Vishnu Prasad Sharma's case*⁽²⁾ is distinguishable in many respects and in my view should not be followed. The provisions of the Indian Land Acquisition legislation are not identical to the Sarawak legislation on the same subject though there may be some similarities. One

important matter to bear in mind is local conditions. The Indian decision should not be followed without scrutiny as conditions in India are vastly different from those available in Malaysia, particularly Sarawak, especially in the matter of sentiments attached to the ownership of land. *Vishnu Prasad Sharma's case*⁽²⁾ was decided on the basis of not only the construction of the statute as such but also on some background consideration which could not be relevant and applicable to the case under appeal in view of the clear wording of section 60. No question of validity in the acquisition process is involved. The issue is the material date for determining compensation. It is proper to distinguish between the Indian section 23(1)(i) and the Sarawak section 60. The Indian section 23(1)(i) reads:—

"In determining the amount of compensation for land acquired under the Act, the court shall take into consideration —

(i) the market value of the land at the date of the publication of the notification under section 4 subsection 1;...."

While the Indian provision specifies only one date for determining the market value under section 4(1) the Sarawak provision clearly provides for alternative date, that is, either section 47 or section 48. As stated earlier, under the Indian legislation both sections 4 and 6 must be used together. There could be no acquisition by using one without the other. Under the Sarawak legislation section 48 alone could be used and the acquisition would be perfectly lawful. To use the language of Wanchoo J., sections 47 and 48 are not necessarily "intimately connected." Section 48 is only applicable if no notification under section 47 has been published. It is pertinent to note that section 60 speaks of "publication" of notification under section 47. So that where both sections are used the earlier date must be taken as the material date for determining compensation. The scheme devised for Sarawak legislation is to avoid question of validity of the acquisition process. It seems that the Sarawak Legislature were in all probability aware of the limitation of the Indian legislation and did not wish to be so restricted in order to avoid inconvenience and delay by having to repeat the acquisition process by providing alternative material date for determining compensation.

In passing it may be mentioned that section 5A of the Indian Land Acquisition Act was a new provision introduced in 1923. It is a matter for the State Legislature to decide whether or not a similar provision should be introduced. Following the decision of *Vishnu Prasad Sharma's case*⁽²⁾ the Land Acquisition Act, 1894 was amended with retrospective effect by the promulgation of the Land Acquisition (Amendment and Validation) Act, 1967 to restore the established practice of using more declarations than one under section 6 in respect of land covered by a notification under section 4.

The interpretation which commended itself to me differs, with respect, from that of the learned judge. I take the view that under the Sarawak legislation it is possible for more declarations than one under section 48 to be made in respect of land comprised in a notification under section 47. I am aware where compensation has to be determined with reference to the material date under section 47 any delay in making a declaration under section 48 is bound to cause the

A person whose land is to be acquired to suffer pecuniary loss if land prices have arisen between the period of notification under section 47 and declaration under section 48. The delay would be longer if successive declarations under section 48 could be made in respect of land comprised in the notification under section 47. It could also work in the reverse if the land prices tumble down. I hope the government would try to minimise the delay in making the declaration or declarations. One way of preventing long delay would be to fix a time whereby notifications under section 47 would automatically lapse. Another way is to withdraw resumption under section 79 as soon as the land is no more required for public purpose. In my view as long as the publication of the notifications under section 47 exists there is nothing to prevent the making of more declarations than one under section 48 involving the acquisition of a large area as in this case.

Respondent's valuer considered that the four lots under appeal and Lots 14 and 53 should be assessed as a whole since both parent titles with similar terms and conditions were held by the same owner. Amalgamation of the two parent lots is possible as this is a purely administrative procedure involving no variation of title conditions. Further, Lot 1460 is a narrow strip and oblongated in shape with an average depth of about 178 feet. For purpose of maximum land utilisation a prudent purchaser would not purchase it without the adjacent back lot. Similarly, the prudent seller would not sell Lot 1460 and withhold the adjacent back lot as this will materially affect the price of the adjacent back lot. Based on the notion of a willing seller and a willing buyer all the lots should be taken *en bloc* for the purpose of a sale. These lots cover about 80.899 acres. Most of the lots relied on for comparison are small, many are less than an acre in area. On the basis of the comparative sales method and after certain percentage deduction the respondent's valuer suggested \$11,700 per acre for each of the six lots mentioned.

Not surprisingly, the learned judge considered the Government valuer's assessment on the four lots under appeal based on section 47 could not stand. He found that the Government valuer did not take into consideration potentiality which could be capable of realisation. He made it clear that it was the value at the time that such advantage had to be determined. At that time the land had not been subdivided as to permit sale of individual units and that a great deal had to be done before there could be disposal in that manner. Also, apart from expenses involved there would be risk and delay. The Government valuer was also inconsistent in his valuation. For Lot 97 containing 9.98 acres which was also carved out of parent Lot 2007 an award of \$17,435.00 per acre was based on the material date being March 4, 1976 under section 47. (See page 357 of Appeal Record). Other lots from the same parent Lot 2007 were awarded between \$3,750 to \$7,000 per acre based on March 19, 1971 as the material date under section 47. All the parcels of land were classified as Town Land vide Sarawak Gazette Notification No. 7 dated January 24, 1969. Assessment based on "second", "third", and "fourth" and so forth lot system on lots artificially carved out from parent lots at different stages could

produce absurd results especially if the parent lots to be acquired are of considerable sizes. This is because the further the carved out lot is from the main Pandaruan Road the lesser would be the price per acre. It is conceivable that the extreme northern tip of the land would get practically little value based on March 19, 1971 as the material date under section 47.

The learned judge has dealt in some detail with all the lots referred to by the parties and has made comparison of various sales of such lots. As Lord Wilberforce said in *Aik Hoe & Co. Ltd. v. Superintendent of Lands & Surveys*⁽³⁾:—

"No doubt consideration must be given to the fact as is well established in reported cases, that land valuation inevitably involves an element of appreciation and impression, as well as some element of local knowledge. The findings of the trial court in such cases, particularly when supported by expert assessors with local knowledge, should be approached with respect and not lightly disturbed. But as was said in an Indian case, depending upon an enactment similar to the Land Code 'as in the case of any other judicial proceedings, the findings must be based upon evidence and legitimate deductions from it, and if there is an appeal, both the evidence and legitimate deductions are subject to reconsideration by the appeal court,' though 'it may be more difficult [to satisfy the appeal court that the judgment is wrong] in land acquisition appeals than in other cases.'" (*Assistant Development Officer v. Tayabelli*).⁽⁴⁾

There has not been any sale of land in Limbang of an area comparable to that suggested by respondent's valuer of the sale of six lots together. It must be kept in mind that Limbang is not a densely populated area where there is large capital surplus. As Suffian J., as he then was, said in *Superintendent of Lands & Surveys Sarawak v. Aik Hoe & Co. Ltd.*⁽¹⁾:—

"Common experience has shown that in areas where there is a small population the price per unit of area for a large parcel is less than the price per unit of area for a small parcel."

Quite clearly the learned judge considered the amount asked by respondent too high and the amounts awarded by appellant too low. The two assessors who sat with him shared his view. Taking into account all the factors which should be taken into account, I am of the view that the awards made by the learned judge on the four lots based on section 47 are fair and reasonable. I would, therefore, allow the appeal by appellant and dismiss the cross-appeal by respondent. Appellant shall have costs of the appeals.

Chang Min Tat F.J. (read by Lee Hun Hoe C.J. (Borneo)): This so-called appeal from the amount of compensation by the Superintendent of Lands and Surveys, Fifth Division, Limbang to the High Court and thence to this court is more properly a Land Reference under section 56 of the Land Code of Sarawak (Cap. 81, Laws of Sarawak, 1958 Edition). The question that is called for determination is basically the date on which the market value of the land to be resumed by the Government is to be assessed. Section 60(1)(a) which reads

"60(1). In determining the amount of compensation to be awarded for land resumed under this Part, the court shall take into consideration—

(a) the market value at the date of the publication of the notification under section 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under section 48...."

gives two dates, one the date of the notification under

A section 47 or if no such notification had been published, the date of the posting of the declaration under section 48.

The wording of sections 47 and 48 is as follows:

B "47.—(1) Whenever the Governor in Council passes a resolution that land in any locality is likely to be needed for any of the purposes specified in section 46, the Superintendent shall cause a public notice of the substance of such resolution to be given at convenient places in such locality, and thereupon any officer or other person either generally or specially authorised by the Governor in Council in this behalf and his servants and workmen may enter upon such land and may survey, bore, take levels, set out and mark boundaries, and do all other acts necessary to ascertain whether the land is suitable for such purpose.

C (2) As soon as conveniently may be after such entry, the Superintendent shall assess the compensation for damage resulting therefrom.

(3) Such compensation shall not become payable so far as it relates to any land which is resumed under section 48 and, if paid, shall be refunded to the Crown on demand by the Superintendent.

D (4) If there is any dispute as to the amount of any compensation which has become payable, the persons to whom it is payable or the apportionment of the compensation, such dispute shall, if any person interested so requires, be referred to arbitration in accordance with the provisions of section 212.

48.—(1) Whenever it appears to the Governor in Council that any particular land is needed for any of the purposes specified in section 46, the Clerk of Councils shall make a declaration to that effect.

E (2) The declaration shall be posted in the office of the Superintendent and of the District Officer and shall state the situation of the land, the particular purpose for which it is needed, its approximate area and all other particulars necessary for identifying it and also the place where a plan of the land, if any has been made, may be inspected. Such declaration shall be conclusive evidence that the land is needed for the purpose specified therein.

(3) Upon the posting of such declaration an entry thereof shall be made in the Register in respect of the land affected."

F Section 47 read with section 60(1)(a), on a proper construction, has the effect of freezing the valuation of the land intended to be resumed by the Government at the date of the publication of the resolution passed by the Governor in Council that the land in question is likely to be needed for any of the purposes specified in section 46. It starts the train of events leading to the formal resumption of the alienated land by the Government. The Government may then enter on the land for all the purposes of ascertaining the suitability of the land for resumption for the purposes stated in the notification, with the right however reserved to the landowner to compensation for damage resulting from such entry into occupation, which right vanishes and compensation for such damage is not payable when and if the land is resumed under section 48. Section 47 is not therefore the final act of resumption. Despite such a notification, the Government may yet decide not to proceed with the resumption of the land.

I Section 48 is however such a final act of resumption, or the first step in the final act of resumption. It operates as a declaration that the land is required for a public purpose, and upon its issuance, an entry is made in the Register. The various processes of the drawing of plans, of requiring parties to state their names and interests and of an enquiry into and award of the amount of compensation (sections 49, 50 & 51) follow from the Superintendent taking possession of the land under section 53.

That is the law applicable to the case in question and in accordance with these provisions, the Superintendent on March 19, 1971 issued a notification under section 47 that lots 1460 and 2007 amongst others were likely to be acquired for resettlement purposes. There also appears to be a second notification in respect of lot 2007 on March 29, 1973, but no one took any point in respect of that.

Consequent on the notification and by virtue of the powers under the section, Government moved in and among other acts, sub-divided the lands into several sub-lots. Lot 1460 was sub-divided into lots 13, 14, 15 and 16. Lot 2007 itself by a series of sub-division became lots 52, 53, 83, 89, 92, 96 and 97.

In this appeal from the High Court, this court is concerned only with lots 13 (from old lot 1460) and 83, 89 and 92, but for the argument that developed in the High Court and before this court, it is necessary to note that the first notice of acquisition under section 48 was posted in respect of this area of lots 14, 15 and 53 amongst others on February 1, 1973, that the notice under this section 48 in respect of lots 13 and 83 was posted on August 6, 1974, in respect of lot 89 on October 10, 1974 and in respect of lot 92 on August 7, 1975.

The argument is that on a proper construction of the relevant provisions of sections 47, 48 and 60(1)(a), and on the authority of *The State of Madhya Pradesh & Ors. v. Vishnu Prasad Sharma & Ors.*,⁽²⁾ once posting under section 48 has been completed in respect of any part of the land or lands under notice in section 47, the notice is spent or exhausted, so that the "freezing" of the other parts of the same piece of land is unfrozen, so to speak, and any acquisition of any part or parts of the lands under section 48 is a new act of acquisition and the valuation thereof is to be taken at the date of the acquisition and not of the notice. No one has taken the point that such subsequent acquisition requires a new notice under section 47 as it is common ground that it is possible to acquire land directly under section 48 without having first to go through section 47.

The learned judge clearly thought that the award of the Superintendent erred on the side of parsimony, accepted the doctrine of exhaustion and he set valuations on the various dates under section 48, but in view of the argument and the almost certainty of an appeal to this court, he very considerably also assessed the amounts of compensation payable on a valuation as at March 19, 1971.

A comparative table is helpful:

Lot	Acreage	Superintendent		Section 47		Section 48	
		Per acre	Amount	Per acre	Amount	Per acre	Amount
13	6.49	\$5,000	\$ 32,450	\$6,500	\$ 42,185	\$8,500	\$ 55,165
83	40.34	\$3,750	\$164,275	\$5,000	\$201,700	\$6,500	\$262,210
89	10.14	\$3,750	\$ 38,025	\$5,000	\$ 50,700	\$7,000	\$ 70,980
	5.25	\$3,800	\$ 19,950	\$5,500	\$ 28,875	\$7,500	\$ 39,375

The superintendent also added a sum of \$13,000, which the judge upheld and did not increase in respect of the buildings on lot 83 and for disturbance to it. There is no dispute to this.

In so far as the valuation of the lands is con-

cerned, I am entirely satisfied that the learned judge has fully followed the various guide lines for such valuation laid down in the subsequent sub-sections of section 60 and that, as the parties to the action seem also to think, the only point in the appeal is the date for such valuation.

On the doctrine of exhaustion, I respectfully disagree with the learned judge for the reasons set out by my brother Salleh Abas F.J. that it does not apply since unlike the provisions in the Indian Land Acquisition Act which are not exactly similar, the relevant sections in the Land Code do not form an integral process. In my view, the possibility of acquisition under section 48 without the prior notification of section 47, which is what the landowner contends, is itself the argument against the doctrine.

For myself I would therefore set aside the order of the High Court and award the owner the assessment of the learned judge under section 47. This means that the appeal of the Superintendent is allowed and the cross-appeal of the landowner is dismissed. The superintendent shall have the costs of the appeals.

Salleh Abas F.J: The facts in so far as they are relevant for the purpose of this appeal can be briefly stated as follows.

The Sarawak State Government acquired large pieces of land for the purpose of carrying out a number of public projects. The parcels of land to which this appeal is confined are lot 13 (K.12/75), lot 83 (K.1/77), lot 89 (K.4/76) and lot 92 (K.5/76), all of which are originally from parent lots 1460 and 2007. Lot 13 is originally part of a parent lot 1460 which is mutated into two new lots, i.e. lot 13 and lot 14. Both are acquired by the Government, but only lot 13 is the subject of the present appeal. Lots 83, 89 and 92 are originally part of a parent lot 2007. This parent lot is mutated into seven new lots, two of which (lot 52 and lot 96 with a combined area of about 174 acres) are not acquired by the Government, whereas the remaining five lots are acquired. Of those five acquired lots, only three lots, i.e. lots 83, 89 and 92 are the subject matter of the present appeal. Thus the present appeal relates to the assessment of only four acquired lots: Lots 13, 83, 89 and 92.

Notification under section 47 of the Sarawak Land Ordinance stating that lots 2007 and 1460 were likely to be required for public purposes was published on March 13, 1977 (G.N 709). Subsequently, four different declarations under section 48 of the Ordinance stating that these lots were needed for public purposes were published in Gazette Notification on four separate occasions as follows:—

Lot 13 and Lot 83	—	8.8.74
Lot 89	—	10.10.74
Lot 92	—	7.8.75
and Lot 97	—	11.11.76.

Purporting to act under section 60(1)(a) of the Ordinance, which says that in determining the amount of compensation to be awarded the court shall take into consideration the market value as on the date of the notification under section 47, which in this case is March 19, 1971, the Superintendent of Lands and Surveys proceeded to assess the compensation accordingly, and following the recommendation of the Government Valuer he made the following awards:—

Description	Area	Award Per Acre	Total Amount Awarded	Remarks
Lot 13	6.49 acres	\$5,000	\$ 32,450	plus \$13,000 for buildings and disturbances.
Lot 83	40.34 acres	3,750	164,275	
Lot 89	10.14 acres	3,750	38,025	
Lot 92	5.25 acres	3,800	19,950	

On a reference to the High Court, the learned judge held that the proper date for determining the market value is not the date on which notification under section 47 was published, but the various dates on which declarations under section 48 of the Ordinance were gazetted. In his judgment, as soon as a declaration under section 48 is issued, notification under section 47 becomes fully exhausted and cannot be used to uphold subsequent declaration under section 48 without preceding it with a fresh notification under section 47. Accordingly, he made the following awards based on the market value as on the date of declarations made under section 48:—

Description	Area	Award Per Acre	Total Amount Awarded	Remarks
Lot 13	6.49 acres	\$8,500	\$ 55,165	plus \$11,000 for values of two buildings and \$2,000 for disturbances.
Lot 83	40.34 acres	6,500	262,210	
Lot 89	10.14 acres	7,000	70,980	
Lot 92	5.25 acres	7,500	39,375	

However, in the event of his opinion of the determining date of the valuation being overruled on appeal, he also made an alternative assessment of the market value as on the date of the publication of the notification under section 47. This is as follows:—

Description	Area	Award Per Acre	Total Amount Awarded	Remarks
Lot 13	6.49 acres	\$6,500	\$ 42,185	plus \$11,000 for two buildings and \$2,000 for disturbances.
Lot 83	40.34 acres	5,000	201,700	
Lot 89	10.14 acres	5,000	50,700	
Lot 92	5.25 acres	5,500	28,875	

The appellant appealed against the decision of the learned judge in accepting the dates of the various declarations under section 48 as being the date for determining the market value of these four lots. In his judgment the learned judge, following the decision of the Indian Supreme Court in the *State of Madhya Pradesh & Ors. v. Vishnu Prasad Sharma & Ors.*,⁽²⁾ held that notification of the likelihood of the land being required for public purpose under section 47 is fully exhausted once it is followed by a subsequent gazetting of a declaration of the need of the land for public purpose under section 48, so that the Government is not permitted to issue several subsequent declarations under section 48 by merely relying on one prior notification under section 47. The effect of this rationale is that each time the Government wants to issue a declaration under section 48, it can no longer rely on a prior notification under section 47 but it has to issue a fresh notification under the section. If, however, the Government does not issue a fresh notification under section 47, but instead proceeds to issue the declaration under section

A 48, the date of determining the market value should be the date of declaration under section 48 and not the date of notification under section 47, as the notification has fully exhausted itself.

In dealing with a precedent from another jurisdiction, the court must adopt a cautious attitude. It has first to discover what the *ratio decidendi* is and what legal effect that *ratio decidendi* has produced. Secondly, having discovered the *ratio decidendi* and its effect, the court must make a comparative analysis of the relevant legislations in force in our jurisdiction and in that of the court whose decision is recommended, however similar these two legislations may be. Legislations in two different jurisdictions may well be dealing with similar subject matter, but they are not necessarily identical to each other either in terms of wording or background situations. In my view, even if our court would regard the decision of the Indian Supreme Court as being binding (which is definitely not, as it merely enjoys a persuasive authority), the case of *Vishu Prasad* is completely not applicable to the present case. Whilst I agree that the validity of compulsory acquisition of lands depends on valid government declaration of public need, how such declaration is to be made is materially different under Sarawak and Indian legislations. Under Sarawak Land Ordinance, the Government can forthwith issue a declaration under section 48, if it is so minded, without having to precede it by any notification of likelihood of the land being required for public purpose under section 47. Such declaration is "conclusive evidence" of the public need. Section 60(1) (a), in recognising the determining date to be the date of notification under section 47 of the date of declaration under section 48, "if no such notification has been published", shows clearly that the Government need not have to resort to notification under section 47 before issuing the declaration of public need. On the other hand, the position in India under its Land Acquisition Act is different. No acquisition is valid without a prior notification of likelihood that the land is needed for a public purpose under section 4 of the Indian Act. The Government cannot straightaway resort to the issuing of a declaration of public need under section 6 without first preceding it by notification under section 4. This is, in my view, the *ratio decidendi* of *Vishu Prasad's* case. First the Collector has to issue a notification under section 4, and after that notification is issued there will be an inquiry by the Collector under section 5-A in order to determine the objections by the land owner against the Government's proposal to acquire the land. After the inquiry is completed, the Collector has to send his report together with recommendations to the Government. Only after receiving the report and recommendations from the Collector will the Government make a decision as to whether or not to proceed with the acquisition. If it so decides, the Government will have to issue a declaration under section 6 of the Act. All the three judges of the Supreme Court in that case agreed that these three sections, i.e. sections 4, 5-A and 6 constitute one complete unit, so much so that each time the process has been followed to its completion the Government cannot begin from the middle but to start all over again from the beginning. The judgment of Chief Justice Wanchoo

dwelt at great length on the integrity and the unity of these three sections as being one complete scheme. This is the central core of the decision — the integrity of sections 4, 5-A and 6 as one complete whole. He emphasised this point again and again in his long judgment (see paragraphs 12, 13, 14, 16 and 17), and finally at paragraph 16 he concluded as follows:—

“Sections 4, 5-A and 6 in our opinion are integrally connected. Section 4 specifies the locality in which the land is acquired and provides for survey to decide what particular land out of the locality should be needed. Section 5-A provides for hearing of objections to the acquisition and after these objections are decided the government has to make up its mind and declare what particular land out of the locality it will acquire. When it has so made up its mind it makes a declaration as to the particular land out of the locality notified in section 4(1) which it will acquire. It is clear from this intimate connection between sections 4, 5-A and 6 that as soon as the Government has made up its mind what particular land out of the locality it requires, it has to issue a declaration under section 6 to that effect. The purpose of the notification under section 4(1) is at this stage over and it may be said that it is exhausted after the notification under section 6.”

The effect of holding those three sections as the integral unit in that each is depending upon one another, leads the court to deduce that once a declaration under section 6 is made, the notification under section 4(1) must be exhausted, for it has served its purpose. In other words, the legislative scheme created under Indian Act is that notification under section 4, a subsequent public hearing as to objection under section 5-A and a declaration of public need under section 6 are a complete unit and the effect is that once a process is completed, the Government must begin again. There can never be any declaration under section 6 without a prior notification under section 4. Such being the *ratio decidendi* of *Vishu Prasad's* case, I cannot see how the case is at all relevant to the present case under appeal which is governed by a different legislative effect produced by sections 47, 48 and 60 of the Sarawak Land Ordinance.

Under this Ordinance, land owners are not given the right to oppose the proposed acquisition, and acquisition is perfectly lawful by the Government issuing a declaration under section 48 without having been preceded by a notification under section 47. Sections 47 and 48 are not necessarily, to use the language of Chief Justice Wanchoo, “intimately connected”. Because of this difference, section 60 of the Sarawak Legislation gives two dates for the purpose of determining compensation, i.e. the date of notification under section 47, but where there is no such notification the date will be the date of the declaration under section 48. Thus where both notification and declaration are issued, the earlier date must be taken to be the determining date. There cannot be an exhaustion of notification under section 47 because the Sarawak Land Ordinance does not make section 47 and section 48 as forming one integral part. Section 60(1)(a), apart from fixing the date of determination of compensation by giving two alternative dates, whichever is the earlier, implicitly implies that resort to section 48 can be had without relying upon action done under section 47. There is no reason why section 60(1)(a) which is self-explanatory, should not be given its full effect. Further, the various background factors which the judges of the Indian Supreme Court took into consideration in deciding the *Vishu Prasad's*

A case are not applicable to our case as they are irrelevant in view of the clear wording of section 60.

Hence, with respect, I find myself in disagreement with the decision of Mr. Justice George Seah in applying the principle enunciated by the Indian Supreme Court in *Vishu Prasad's* case to the present case under appeal. Not only the two legislations — Indian and B Sarawak — are not identical, though they may have some similarities, but also the Indian decision should not be readily accepted without scrutiny and reservation as the social, economic and political conditions in India, in my view, are vastly different from those available in Malaysia, especially in the matter of sentiments attached to ownership of land. Similar C attitude was taken by this court in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri*⁽⁵⁾ at page 141, per Ong Hock Thye C.J.

As to the cross-appeal by the respondent that the learned judge's award as on the date of the declaration under section 48 is still inadequate, this appeal cannot now succeed in view of my ruling that the determining date is the date of notification under section 47. Hence, for reasons given above, I allow the appeal by the Superintendent of Lands and Surveys, and order that the award which the Government should pay to the respondent in respect of the four lots under appeal is as assessed by the learned judge in accordance with the date of notification under section D 47. I also order that the appellant should be entitled to costs of this appeal.

Appeal allowed; cross-appeal dismissed.

Solicitors: Ibrahim & Co.

F SARAWAK ELECTRICITY SUPPLY CORPORATION v. WONG AH SUAN

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat & Salleh Abas F.J.) April 24 & July 6, 1979]

[Kuching — Federal Court Civil Appeals Nos. 11 & 18 of 1979]

G *Administrative Law — Licence giving exclusive right of supplying electricity in Saratok, Sarawak — Consent sought from licensee to issue licence to Sarawak Electricity Supply Corporation to supply electricity to suppliers in area — Whether consent unreasonably withheld or refused — Whether right to be heard given to licensee — Audi alteram partem rule — Matter considered by Governor-in-Council — Sarawak Electricity Supply Corporation Ordinance, 1962, ss. 14 & 15.*

H In this case the respondent had been given a licence giving him the exclusive privilege of supplying electricity to Saratok in Sarawak. The charges made by the respondents were higher than those charged in other areas. Under the Sarawak Electricity Supply Corporation Ordinance, 1962, the Government had a scheme for rural electrification. Under the Ordinance it was provided that the Corporation would not supply electricity to a consumer in an area, which forms part of the area of supply of a licensee, except with his consent. It was also provided that where a licensee refuses or withholds such consent the corporation can appeal to the Governor in Council, who can, if satisfied that such consent has been unreasonably refused or withheld, dispense with such consent. The corporation asked the respondent for consent to supply electricity to some applicants from Seratok but this was refused. The respondent also turned down a request to charge the new rates for the supply of electricity fixed by the Ministry of Communications and Works. The Corporation thereupon appealed to the Governor-in-Council, who after considering the material evidence including the correspondence I